

SECOND MEETING WITH
ATTORNEY ADVISORY COUNCIL
MAY 31, 2002 1:30 P.M. TO 3:30 P.M.

Attendees:

Attorney Advisory Council Members:

T.J. Mullin Law Office of T.J. Mullin	Leonora Long Office of the U.S. Trustee	Susan Reiss Bryan Cave, LLP
Steven Goldstein Goldstein & Pressman, P.C.	Fredrich J. Cruse The Cruse Law Firm	Pete Burns
Janice Valdez Stone Leyton & Gershman	David Warfield Husch & Eppenberger	Bill Guelker J. LaBarge's Office
Amy Tucker Thomas Noonan's Office	Michael McClafin Thompson Coburn, LLP	Karen Miller Spain, Merrell & Miller (By Telephone)

Court Members: Janice Wells-White, CM/ECF Project Manager

Court Attorney Advisory Committee: Diana Durkee-August, Roe Blankinship, Wynne Abernathy, Susan Spraul, Chris Keefe, Sandy Louis

I. Housekeeping items:

1. **Web Page** - Council requested the Court post the Attorney Advisory Council meeting minutes on the Court's web page along with Council member's names and phone numbers. Council also requested the Court post the ECF hardware and software specifications on the Court's web page.
2. **Training** - Court confirmed that it would use the "Train the Trainer" format to train technical or training staff at larger law firms with the idea that they would then train the firms' attorneys, paralegals and secretaries. Preferred days and times for attorney training were suggested as various dates throughout the week as well as Saturday mornings at 9:00 a.m., twice each month.
3. **CBT** - Several attorneys tried the CBT. Mr. Goldstein offered the Computer-Based Tutorial was not IE compatible. Janice Wells-White stated IE 5.5 is working but they are experiencing problems with IE 6.0. Council was encouraged to use CBT to gain background experience especially if not filing electronically in another court.

II. New Items - Current Agenda

A. Signatures of Clients, Attorneys and the Judge

1. Attorney's Signatures

The general rule in courts using ECF is that an attorney's login and passwords are considered the attorney's legal signature for all purposes, including Federal Rule of Bankruptcy Procedure 9011. Most courts have ECF local rules known as "ECF Administrative Procedures" which state that the login and password are the attorney's signature on any document transmitted for filing.

Although most courts use a "/s/" mechanism to show that an attorney has signed the pleading, the consensus of the Council was that no signature is necessary if the log-in and password qualify as a signature. Although the Council recommended the "/s/" is not necessary, there was some discussion that the Court may retain the requirement because so many other courts are using it. The consensus of the Council was that the login and password would act as the signature and that no other indicia is needed. Consequently, if the login and password are sufficient, the Council strongly recommends that any document filed which includes some form of signature, (whether /s/, scanned or imprinted) not be rejected by the Court.

Council members reported that some courts requiring the /s/, will not accept the attorney's scanned signature, or an imprinted signature and will reject a pleading if the line in the "/s/ _____" is in the wrong place. If this Court will require some indicia of signature, such as /s/, the Council strongly recommends the Court not reject any pleading transmitted by an attorney for use of another form of signature.

Council discussed other signature options, including imprinted images of signatures. Bill Guelker advised that scanned or imprinted signatures may pose security concerns in that the image may be retrievable and copied from one document to others.

Remaining concerns about attorney signatures include issues of internal law firm management. Specifically, the issues include (1) knowing that a staff member has the attorney's authority to submit the document; and (2) possible abuse of the attorney's login and password by staff resulting in filing false documents. Council acknowledged these were issues for the attorneys and not the Court.

2. Clients' Signatures

The Council considered issues of client signatures, focusing on how (or even whether) to ensure a client has authorized the content of a petition and schedules prior to electronic filing. Some courts use a Declaration form signed by the client and retained in hard copy format by the court. The declaration generally provides the client's written authorization to file the documents.

Use of Declaration Form - Reasons to use the form are:

- (1) for the court to know the client actually authorized the filing;
- (2) for the attorney to have some record that the client verified the content of the document filed (petition, schedules and statement).

After discussion it was decided a Declaration was necessary for the reasons enumerated above. Further discussion led to the conclusion that the declaration should be filed with the Court within eight (8) days of the electronic filing. Some thought that time period was too short, but others felt the goal is to ensure the documents are authorized so the declaration form should be signed and filed promptly.

Other advantages of the form - The Council suggested it may be helpful to provide the client's written authorization to the attorney to release document in the client's original file establishing client's signature and authorization of the petition. In comments after the meeting, Mr. Goldstein further suggested that the Declaration could possibly be used to aid in waiving the best evidence rule allowing the electronic version of the petition, schedules, etc. to suffice in court proceedings. The U.S. Attorney's comments will be solicited on this matter.

Sample Declaration Forms - Council reviewed two sample forms: one from Western District of Missouri and a modified form proposed for Eastern District of Missouri.

Focusing on the Western District of Missouri Declaration form, the attorneys suggested eliminating the text in Part I, paragraph number one, second sentence, "or will give my attorney and" as well as all of paragraph two. Some of the Council members did not like the sentence in Part II, "The debtor(s) signed this Declaration before I submitted the petition, schedules and statements." Others felt they were protected by the statement and by having the client sign indicating they authorized the content of the documents filed.

Remaining Question - When must Declaration form be filed if schedules are not filed with the petition or are subsequently amended? Is a new form required for amended schedules? Fred Cruse agreed to check with the NABT on this issue and Janice Wells-White agreed to check with other courts.

B. Future Topics - (1) Retention of Documents, (2) Service of Petition, Schedules and Statements on the Trustee; and (3) Noticing issues.

Meeting concluded at approximately 3:40 p.m.

**NEXT MEETING - Friday, June 21, 2002, 1:30 p.m. -3:30 p.m.
28th Floor TFE, South Conference Room.**